



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

ELP
Docket No. 3889-99
20 September 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 September 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 29 January 1974 for three years at age 17. The record reflects that you were advanced to FN (E-3) and served without incident until 6 February 1976 when you received nonjudicial punishment (NJP) for possession of marijuana. Punishment consisted of forfeitures of \$200 per month for two months, reduction in rate to FA (E-2), and 45 days of restriction and extra duty. However, on 20 February 1976, after several counseling sessions, new evidence and mitigation was brought out and the case was reversed. Your rate was restored, pay was reinstated, and all restriction and extra duties were lifted. You were advanced to EN3 (E-4) in June 1976 and agreed to extend your enlistment for an additional period of 24 months on 21 September 1976.

You served without further incident until 1 February 1978 when you were convicted by special court-martial of two specifications

of the sale, possession, and transfer of marijuana and lysergic acid diethylamide (LSD). You were sentenced to confinement at hard labor, forfeitures of \$265 per month for three months, reduction in rate to FR (E-1), and a bad conduct discharge. You were released from confinement on 14 May 1978. Clemency and restoration to duty were denied on 8 February 1979 and the Navy Court of Military Review affirmed the findings and the sentence on 30 March 1979. You received the bad conduct discharge on 5 September 1979.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, and the fact that it has been 20 years since you were discharged. The Board noted your contentions that following your court-martial conviction you remained on active duty for more than 19 months before being discharged and that clemency was denied despite the recommendation of the command. You also claim that you have been drug free for the past 15 years. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given the serious nature of the drug-related offenses which resulted in your court-martial conviction. The Board was aware that subsequent to your conviction you served for more than 19 months without incident. The Board noted that it was somewhat unusual for an individual to remain on active duty for so long following a court-martial conviction which awarded a punitive discharge. However, at that time, an individual could not be placed on involuntary appellate leave during appellate review process without his consent. There is no evidence that you submitted a request to be placed on appellate leave. The Board did not find that your service without further incident during the 19 months awaiting discharge was sufficiently mitigating to warrant clemency given the serious nature of the drug offenses of which you were convicted. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. Therefore, the Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director